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Eleventh Circuit Adopts Manifest Disregard of the Law as a Non-Statutory Ground for Vacating an Arbitration Award - Montes v. Shearson Lehman Brothers, Inc., The

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The Eleventh Circuit Adopts Manifest Disregard of the Law as a Non-Statutory Ground for Vacating an Arbitration Award

Montes v. Shearson Lehman Brothers, Inc.[1]

I. INTRODUCTION

When parties agree to resolve disputes through arbitration, they expect the resolution to be binding and final. There are a few situations, however, where a court will be willing to intervene and vacate the arbitration board's award. The Eleventh Circuit Court of Appeals, in *Montes v. Shearson Lehman Brothers, Inc.*, recognized that manifest disregard of the law by an arbitrator is a reason to abandon the arbitrator's ruling and remand the case to a new arbitration board. The court established that when it can be shown that the arbitrator knew the law and expressly ignored it, his decision will not be honored.

II. FACTS AND HOLDING

Delfina Montes ("Montes") was an employee of Shearson Lehman Brothers, Inc. ("Shearson").[2] After Montes stopped working for Shearson, she sued for overtime pay pursuant to the Fair Labor Standards Act ("FLSA").[3] The federal district court to which Shearson removed the lawsuit referred the case to arbitration in accordance with an arbitration agreement Montes signed when she began work for Shearson.[4] The factual issue to be resolved was whether Montes fit within the description of a "covered" employee under the FLSA and was thereby entitled to overtime pay, or was instead "exempt" by virtue of being "employed in a bona-fide . . . administrative . . . capacity."[5]

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1. 128 F.3d 1456 (11th Cir. 1997).
2. *Id.* at 1457.
3. *Id.* The FLSA requires, in part, that covered employees receive overtime pay when they work more than forty hours a week. 29 U.S.C. § 207(a)(1) (1994). However, certain employees are exempt from this requirement. 29 U.S.C. § 213(a)(1) (1994).
4. *Montes*, 128 F.3d at 1458.
5. *Id.* at 1462. An exempt employee is one:

> Whose primary duty consists of . . . the performance of office or non-manual work directly related to . . . general business operations . . . ; and [w]ho customarily and regularly exercises discretion and independent judgement; and [w]ho regularly and directly assists . . . an employee employed in a bona-fide executive or administrative capacity, or [w]ho performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge . . . ; and [w]ho does not devote more than . . . , in the case of an employee of a retail or service establishment. . . , 40% of his hours worked . . . to activities which are not directly and closely related to the performance

Montes argued that she had low-level clerical responsibilities and, therefore, could not qualify for the administrative exemption, and that she simply was a sales assistant with no supervisory authority.[6] She admitted that she had worked as an "Operations Manager" and exercised significant supervisory authority in a prior position with Shearson, but she was a non-exempt employee at the time the suit was brought.[7] Montes had her branch manager testify that she was not able to take on a supervisory role at her current position and that she filled out time cards that were required of only non-exempt employees.[8]

Shearson responded by noting that Montes expected her position to be exempt and that she performed supervisory work.[9] Shearson also claimed Montes was referred to as "Operations Manager," (an exempt position) in internal memos and was in charge of the office staff.[10] This was corroborated by her immediate boss, who testified that she supervised her staff, made sure they were performing their jobs properly, advised staff members on how to deal with problems, and oversaw money transfers, wire transfers, securities transfers, as well as shipping and deliveries.[11] Further, Shearson showed that her salary was $42,500 and that she replaced, and was replaced by, a person who performed supervisory functions.[12] In addition, Montes' replacement testified that her supervisory duties took up about 50% of her time and that she had the power to recommend that someone be fired and assumed that Montes had the same types of duties.[13]

The arbitration board ruled that Shearson did not owe Montes overtime pay.[14] Montes' petition for vacatur to the United States District Court for the Southern District of Florida was denied and she appealed.[15]

In the Eleventh Circuit Court of Appeals, Montes raised two arguments. First, she claimed the district court improperly referred the case to arbitration.[16] She signed a valid arbitration agreement when she first worked for Shearson, and most recently at Shearson's branch office in New Jersey in 1991. However, she contended that the agreement should not be enforced because she did not sign it again when she moved to Shearson's Hallandale branch office.[17] Second, she claimed that the arbitration board's decision was arbitrary, capricious, and violative of public policy in that Shearson's attorney improperly urged the arbitration board

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of the work described (above); and who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week.

29 C.F.R. § 541.2 (1998).

6. *Montes*, 128 F.3d at 1462-63.
7. *Id.* at 1463.
8. *Id.*
9. *Id.*
10. *Id.* at 1464.
11. *Id.*
12. *Id.* at 1463.
13. *Id.* at 1464.
14. *Id.* at 1458.
15. *Id.*
16. *Id.*
17. *Id.*

to disregard the FLSA to find in Shearson's favor.[18] The Eleventh Circuit Court of Appeals ruled that the case was properly referred to an arbitration board and that the arbitrators' decision was in manifest disregard of the law.[19] The court remanded the case to a new arbitration panel.[20]

III. LEGAL HISTORY

As far back as 1855, the United States Supreme Court acknowledged that the decisions of arbitrators should be respected as they are the "judges chosen by the parties to decide the matters submitted to them, finally and without appeal."[21] The parties to a binding arbitration agreement contractually commit themselves, a priori, to accept the decision of the mutually selected neutral as to all conflicted questions of fact and law that arise between them.[22] When the parties agree to arbitrate, they also accept, "whatever reasonable uncertainties [that] might arise from the process,"[23] and thereby "trade[] the procedures and opportunity for review of the courtroom for the [perceived] simplicity, informality, and expedition of arbitration."[24]

The scope of judicial review of the award of the arbitrator has been extremely narrow ever since federal courts began enforcing arbitration awards. It is thought that the idea of arbitration is to provide an alternative to judicial dispute resolution, not an echo of it.[25] If broad judicial review were allowed, arbitration proceedings would be merely "junior varsity trial courts where subsequent appellant review [would be] readily available to the losing party."[26] By agreeing to arbitration clauses, parties gain a quicker way of resolving disputes as well as the specialization of someone who knows the customs and lore of an industry first-hand.[27] However,

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18. *Id.* In opening statements to the arbitration board, Shearson's attorney said, "[A]s an arbitrator [, you] are not guided strictly to follow case law precedent. That you can also do what's fair and just and equitable." *Id.* Later, during his closing arguments, Shearson's attorney said,

> You have to decide whether you're going to follow the statutes that have been presented to you, or whether you will do or want to do or should do what is right and just and equitable in this case. I know it's hard to have to say this and it's probably even harder to hear it but in this case this law is not right. Know that there is a difference between law and equity and I think, in my opinion, that difference is crystalized in this case. The law says one thing. What equity demands and requires and is saying is another. What is right and fair and proper in this? You know as arbitrators you have the ability, you're not strictly bound by the case law and precedent. You have the ability to do what is right, what is fair and what is proper, and that's what Shearson is asking you to do. I ask you not to follow the FLSA if you determine she's not an exempt employee.

Id. at 1458-59.

19. *Id.* at 1464.

20. *Id.*

21. Burchell v. Marsh, 58 U.S. 344, 349 (1854).

22. *Id.*

23. Raiford v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., 903 F.2d 1410, 1413 (11th Cir. 1990).

24. Bowles Fin. Group v. Stifel Nicolaus & Co., 22 F.3d 1010, 1011 (10th Cir. 1994).

25. Ethyl Corp. v. United Steelworkers of Am., 768 F.2d 180, 183-84 (7th Cir. 1985).

26. National Wrecking Co. v. International Bhd. of Teamsters, Local 731, 990 F.2d 957, 960 (7th Cir. 1993).

27. United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960).

"parties lose something, too: the right to seek redress from the courts for all but the most exceptional errors at arbitration."[28]

The types of exceptional errors that Congress allowed courts to review are contained in the Federal Arbitration Act (FAA).[29] Perhaps unwittingly, the Supreme Court in *Wilko v. Swan* stated in dicta, that "the interpretations of the law[,] in contrast to manifest disregard[,] are not subject . . . to judicial review,"[30] thus suggesting a non-statutory ground for vacatur. This statement has led to an expansion of the grounds for vacating judgments, supplementing the statutory reasons for vacatur with a judicially created "manifest disregard for the law" standard, which has since been adopted in all but the Fifth Circuit.[31] Since this 1953 decision, courts have had difficulty in determining the nature of the "manifest disregard" standard. As the Second Circuit said, "[h]ow courts are to distinguish . . . between 'erroneous interpretation' . . . and 'manifest disregard' . . . we do not know. One man's 'interpretation' may be another's 'disregard.'"[32]

The most notable attempt to define "manifest disregard" emerged from the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith v. Bobker*.[33] There are basically three elements to this definition.[34] First, the error must have been obvious, capable of being readily and instantly perceived, as well as regarding a clearly governing legal principle.[35] The vagueness of the words used in this element allow a reviewing court a lot of discretion in determining what cases are subject to review and do not furnish the parties with a solid basis for determining if the disputed issue fits the courts notion of "obvious," "capable," or "clearly governing." A case that

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28. Dean v. Sullivan, 118 F.3d 1170, 1173 (7th Cir. 1997).

29. 9 U.S.C. § 10(a) (1994). In any of the following cases the United States court in and for the district wherein the award made may make an order vacating the award upon the application of any party to the arbitration:

> (1) Where the award was procured by corruption, fraud, or undue means. (2) Where there was evident partiality or corruption in the arbitrators, or either of them. (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced. (4) Where the arbitrators exceed their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made.

Id.

30. 346 U.S. 427, 436 (1953).

31. 128 F.3d at 1460.

32. I/S Stavborg v. National Metal Converters, Inc., 500 F.2d 424, 430-31 (2d Cir. 1974).

33. 808 F.2d 930 (2d Cir. 1986).

34. *Id.* at 933-34. In formulating the definition, the court stated:

> The error must have been obvious and capable of being readily and instantly perceived by the average person qualified to serve as arbitrator. Moreover, the term 'disregard' implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it. To adopt a less strict standard of judicial review would be to undermine our well established deference to arbitration as a favored method of settling disputes when agreed to by the parties. Judicial inquiry under the 'manifest disregard' standard is therefore extremely limited. The governing law alleged to have been ignored by the arbitrators must be well defined, explicit, and clearly applicable. We are not at liberty to set aside an arbitration panel's award because of an arguable difference regarding the meaning or applicability of laws urged upon it.

Id.

35. *Id.*

clearly satisfies the first element of *Bobker* is *Ainsworth v. Skurnick*.[36] In that case, the arbitration panel found a broker to have negligently handled an account in violation of a Florida statute, but found no damages.[37] The decision was vacated because the finding of liability under that statute required mandatory damages under a related statute that the board did not apply.[38]

The second element of the *Bobker* definition is that the arbitrator must have "disregard[ed]" law that was "obvious," "capable," and "clearly governing" under the first part of the definition.[39] The intentional nature of disregard implies that the arbitrator must have, "understood the terms and applicability of [the laws] . . . and deliberately ignored them in making [the] award."[40] This standard appears to exclude situations where the arbitrator should have known the applicable law but, for some reason lacked knowledge. This second element of the *Bobker* definition is in harmony with *Burchell v. Marsh*, which stated that an arbitration award cannot be vacated if it contains an "honest decision of the arbitrators, after a full and fair hearing of the parties."[41] Thus, an honest misreading of the law does not constitute a manifest disregard of the law.

The third element of the *Bobker* definition relates to how clearly the decision to ignore the law is reflected in the arbitration panel's decision. This can either be reflected explicitly in the record or can be inferred from the record, depending on how the court sees fit to address the issue. If the court requires an express statement on the record, an award will only be vacated if the arbitrator admits that they were ignoring what they knew to be the correct law. Such an admission is extremely unlikely because even in the rare case where an arbitrator deliberately ignores controlling law, the arbitrator will not likely announce his misconduct and instead exercise the prerogative not to explain the award.[42] Therefore, the court will have no means of discovering whether the arbitrator manifestly disregarded the law. This is the logic the court took in *Johnston Lemon & Co. v. Smith* when it required the arbitrator to appreciate and "expressly" ignore governing law in order to vacate the arbitrator's decision.[43] This would require "some showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it."[44]

A court more inclined to vacate could infer a manifest disregard of the law, rather than require an express statement. Manifest disregard can be inferred when a court can state "with positive assurance that" the law "is not susceptible to" a contrary interpretation.[45] Because this could only be accomplished when there is no other possible justification, such a court would apparently be willing to infer any rational justification of the award, whether or not that rationale was presented to the court. Other courts considering this issue have stated that awards will be confirmed

36. 960 F.2d 939 (11th Cir. 1992).
37. *Id.* at 940.
38. *Id.* at 941.
39. *Id.*
40. *Bobker*, 808 F.2d at 934.
41. *Burchell*, 58 U.S. at 349.
42. Raytheon Co. v. Automated Bus. Sys, Inc., 882 F.2d 6, 8 (1st Cir. 1989); National R.R. Passenger Corp. v. Chesapeake and Ohio Ry. Co., 551 F.2d 136, 143 (7th Cir. 1977).
43. 886 F. Supp. 54 (D.D.C. 1995).
44. O.R. Sec., Inc. v. Professional Planning Assocs., 857 F.2d 742, 747 (11th Cir. 1988).
45. Jenkins v. Prudential-Bache Sec., Inc., 847 F.2d 631, 635 (10th Cir. 1988).

if there is "a conceivable rational basis supporting the decision,"[46] and the Eleventh Circuit used this standard when dealing with issues concerning the arbitrary or capricious decisions of arbitrators.[47]

IV. INSTANT DECISION

In *Montes*, the Eleventh Circuit Court of Appeals faced an employee petitioning to vacate an arbitration board's decision denying her claim for overtime pay from her former employer pursuant to the FLSA.[48] The court rejected Montes's claim that the district court improperly referred the case to arbitration.[49] Although the court admitted that it "may not order arbitration unless and until it is satisfied that a valid arbitration agreement exists,"[50] the court felt that the arbitration agreement Montes signed was valid. The court noted that simply moving between branch offices within the same company, while the employer/employee relationship continued uninterrupted, did not terminate the agreement.[51]

In regard to her second claim on appeal-- that the arbitration board's decision was arbitrary, capricious, and violative of public policy-- the court agreed with Montes and vacated the arbitration award.[52] The court's review of the arbitration board's decision was governed by the FAA.[53] The FAA presumes that arbitration awards will be confirmed[54] and enumerates only four narrow bases for vacatur, none of which were applicable in this case.[55] In addition, the court may consider, if the award is arbitrary and capricious[56] or if it is contrary to public policy[57] (two non-statutory grounds for vacatur recognized by the Eleventh Circuit). Montes argued that the arbitrators were explicitly urged to disregard the law and, in light of the evidence presented, there is nothing in the record to show that they did not do so.[58] The court noted that "[w]hen a claim arises under specific laws . . . the arbitrators are bound to follow those laws in the absence of a valid and legal agreement not to do so,"[59] to ensure that the substantive rights of the parties are not altered. The parties are merely submitting the issue to an arbitral, rather than judicial, forum.[60] However, the court cited a Supreme Court decision in *First Options of Chicago, Inc. v. Kaplan*[61] for the proposition that states that a party to arbitration can obtain relief

46. Merrill Lynch, Pierce, Fenner & Smith v. Jaros, 70 F.3d 418, 422 (6th Cir. 1995).
47. *Ainsworth*, 960 F.2d at 941.
48. *Montes*, 128 F.3d at 1456.
49. *Id.* at 1458.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. 9 U.S.C. § 9 (1994).
55. 9 U.S.C. § 10(a) (1994).
56. *Ainsworth*, 960 F.2d at 941.
57. Delta Air Lines, Inc. v. Air Lines Pilots Ass'n, 861 F.2d 665, 671 (11th Cir. 1988).
58. *Montes*, 128 F.3d at 1458.
59. *Id.* at 1459.
60. *Id.* (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991)).
61. 514 U.S. 938, (1995).

from a federal court where the arbitration award was made in manifest disregard of the law.[62]

Since the *Kaplan* decision every circuit court except the Fifth Circuit has expressly accepted that manifest disregard of the law is an appropriate reason to review an arbitration board's ruling.[63] Although the Eleventh Circuit has discussed the "manifest disregard for the law" standard,[64] it was not adopted until *Montes*. In adopting manifest disregard for the law as an exception to the rule that arbitration awards should not be disturbed by judicial review, the court stated that "there must be some showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it."[65] The court commented that the arbitrators expressly took note of the plea by Shearson's attorney to disregard the law in their award when they summarized the parties' arguments, and there was nothing in the award or elsewhere in the record to indicate that they did not heed this plea.[66]

In the absence of any stated reasons for the decision and in light of the marginal evidence presented to the arbitration board, the court concluded that it could not say the arbitration board did not manifestly disregard the law.[67] The Eleventh Circuit Court of Appeals reversed the district court's affirmation of the arbitration award and remanded the case to the district court to refer the case to a new arbitration board.[68]

V. COMMENT

In *Montes*, the court accepted "manifest disregard of the law" as a reason for vacating an arbitration award.[69] In defining "manifest disregard," the court refers to its opinion in *O.R. Securities v. Professional Planning Associates*,[70] which, in turn, cites *Bobker* as establishing the standard for determining if the arbitrator manifestly disregarded the law.[71] The first part of a court's analysis under *Bobker* requires that the "obvious" error committed by the arbitration board, be one "capable of being readily and instantly perceived" and regarding a "clearly governing legal principle."[72] Here, the statute that describes employees who are exempt from overtime pay defines those employees in very broad language; it is not so clear that

62. *Id.* at 942.
63. *Montes*, 128 F.3d at 1460.
64. *See* Robbins v. Day, 954 F.2d 679, 684 (11th Cir. 1992); Raiford v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 1410 (11th Cir. 1990).
65. *O.R. Sec.*, 857 F.2d at 747.
66. *Montes*, 128 F.3d at 1461.
67. *Id.*
68. *Id.*
69. *Id.* at 1461-62.
70. *Id.* at 1461.
71. *O.R. Sec.*, 857 F.2d at 746. For the definition the *Bobker* court established for determining manifest disregard see *supra* note 34.
72. *Bobker*, 808 F.2d at 933-34; *see supra* note 34.

the provision of the FLSA that deals with overtime pay, combined with the facts of this case,[73] would entitle Montes to overtime pay.[74]

Assuming a court found the arbitrator's decision to be clearly in error and that it would be obvious to the average person who could be an arbitrator that Montes was entitled to overtime pay, the second part of a court's analysis under *Bobker* requires that the arbitrators' disregard of that clearly governing legal principle be intentional.[75] Thus an honest, yet mistaken, interpretation of the FLSA provision would not result in vacating the award.

In application, this step would have to be combined with the third step, that involves how courts would discover that the arbitrators disregarded the law. An arbitration board could not admit to honestly misinterpreting a law at the time they rule (they could only make such a realization after they ruled and reflected on their decision). Thus, the court could only reverse if the arbitration board stated that they ignored what they knew to be the correct law or if the court could state that the law could not possibly be construed in a different way or that there was no rational ground for the arbitrator's award that could be inferred from the facts.

In *Montes*, there is no direct evidence of the arbitrators stating that they intentionally disregarded what they knew to be the law. Even taking into account that the arbitrators repeated what the counsel for Shearson said,[76] this does not constitute a positive showing that the arbitrators followed that reasoning in reaching their decision.[77] Further, the facts of the case, examined in a light most favorable to Shearson, provide a rational basis for the board ruling in Shearson's favor (which is how the court would determine if the award is arbitrary or capricious). Thus, a *Bobker* analysis of *Montes* would require the award in this case to be upheld and Montes' claim dismissed.

The court in *Montes*, however, does not follow the *Bobker* standard that it seemingly just established, possibly because a strict application of the *Bobker* standard would make it nearly impossible for an arbitration award to be overturned. This reason perhaps explains why the court in *Montes* merely states that manifest disregard occurs when there is some showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it.[78]

Unfortunately, the court does not even address its departure from the manifest disregard definition in *Bobker*, even though the case it cites as defining manifest disregard, *O.R. Securities*, relies on *Bobker*. The definition of manifest disregard as defined in *Montes*, however, even if strictly applied, would not permit greater judicial review even though it does not take into account the "clarity" of the law, as the *Bobker* standard does. This is because the *Montes* definition requires an

73. *See supra* text accompanying notes 6-13.
74. *See supra* text accompanying notes 3, 5.
75. *See supra* text accompanying note 40.
76. *Montes*, 128 F.3d at 1461.
77. This is contrary to what the court stated in *O.R. Securities*; "[T]o allow a court to conclude that it may substitute its own judgement for the arbitrator's whenever the arbitrator chooses not to explain the award would improperly subvert the proper functioning of the arbitral process." 857 F.2d at 747 (citing Sobel v. Hertz, Warner & Co., 469 F.2d 1211, 1214 (2d Cir. 1972)).
78. *O.R. Sec.*, 857 F.2d at 747. This, however, is just a conclusion summarizing manifest disregard. This court merely states the conclusion without regard to the reasoning used to determine if the conclusion is justified.

"express" showing of manifest disregard, in contrast to *Bobker,* which could be read to allow courts to infer manifest disregard.

Yet in this case, the court does not even correctly apply the standard it sets. The court, and arbitrators, noted that the counsel for Shearson urged the arbitration board to disregard the law. But, that is the only information there is to suggest that the arbitration board manifestly disregarded the law. The court says that this, coupled with the fact that there is nothing to indicate that the board did not heed this plea, as well as few of the facts supporting the decision, is sufficient to show manifest disregard.[79] This hardly seems like proof the arbitrators expressly disregarded the law. If this constitutes an "express showing on the record," then it seems that the court is willing to "infer" the arbitrators' manifest disregard from an express urging by one of the parties, but not actually require an express showing by the arbitrators on the record. This reasoning seems wholly illogical and inconsistent with the notion that it is the express showing of manifest disregard by the arbitrators that is a ground for vacating an arbitration award, not an express urging by a party to the action.

In addition, the court overlooked the fact that the arbitrators could have decided to rule for Shearson because they actually believed that she was an exempt employee. The arbitrators might have given more credibility to Shearson's witnesses than to Montes' witnesses. They could have read the FLSA in such a way that would allow Montes to be an exempt employee. The court, however, does not show any deference to the arbitrators who actually heard the case and evaluated the quality of the evidence. Under this court's logic it seems that the presumption that an arbitration award is valid is sufficiently rebutted by a party's urging that the law be disregarded, unless the arbitrators "show that they did not [manifestly disregard the law]."[80]

In this case, it appears that the only way the arbitrators' ruling could stand would be if they commented on how they reached their decision, thus showing they did not heed the plea of Shearson's attorney. This requirement distracts from the purpose of arbitration.[81] If it continues to be adopted the simplicity of arbitration would be removed and the process would be a near carbon copy of litigation, which is what the parties sought to avoid in the first place.

This decision established manifest disregard as a non-statutory reason to vacate an arbitration award, but how will the manifest disregard standard be applied in the future? If the court will only apply manifest disregard to cases with identical fact patterns, this new standard will probably never be applied successfully again because it is a rare case where the evidence to support the award is marginal and an attorney comes out and asks the arbitrators to disregard the law because their position cannot be supported by the law. For this reason it seems that the court in *Montes* fashioned a rule that can only apply in this case and will have no effect in the future. What is

79. *Montes*, 128 F.3d at 1461.

80. *Id.* at 1458..

81. "The absence of express reasoning by the arbitrators [does not] support the conclusion that they disregarded the law." *O.R. Sec.*, 857 F.2d at 747 (citing Stroh Container Co. v. Delphi Indus., Inc., 783 F.2d 743, 750 (8th Cir. 1986)).

troubling is that the court probably did not establish manifest disregard solely to resolve the facts that were present in this case.

I fear that in future cases, manifest disregard will be applied to vacate awards that do not fit the very unusual fact pattern in *Montes*. In the future, a court that looks at the *Montes* court's definition of manifest disregard and applies some of its reasoning could be able to vacate nearly any award. Since arbitrators do not need to write opinions, there will often be nothing in the record that could refute a charge that the arbitrator manifestly disregarded the law. Thus, in situations where there is not overwhelming evidence, a court could note that there are limited facts and vacate the award.

The *Montes* court's definition of manifest disregard is more lax than *Bobker*, even if strictly applied. This coupled with the fact that the court did not strictly apply its own definition of "expressly disregard," as shown through its willingness infer "express" disregard from the arbitrators silence as to its reasoning, could result in vacating awards where the arbitrator is not administering its own brand of justice, but rather merely faithfully applying the facts to an honest interpretation of the law.

VI. CONCLUSION

The Eleventh Circuit Court of Appeals established in *Montes* that a manifest disregard, in contrast to a misinterpretation, misstatement, or misapplication of the law, can constitute grounds to vacate an arbitration award.[82] The court stated that manifest disregard occurs when the arbitrators are conscious of the law and deliberately ignore it.[83] This situation is evident when there is some showing on the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it. This court believed that this definition of manifest disregard can be proven when the arbitrators are expressly urged to disregard the law and there is nothing in the record to prove that they did not do so.

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82. *Montes*, 128 F.3d at 1456.
83. *Id.* at 1459.